



STATE OF OREGON  
MARION COUNTY COURTS  
AUG 01 2011  
**FILED**

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

MARION COUNTY FIRE DISTRICT #1, an  
Oregon rural fire protection district,

Plaintiff,

v.

CITY OF KEIZER, an Oregon municipal  
corporation, and KEIZER FIRE DISTRICT, an  
Oregon rural fire protection district,

Defendants.

Case No. 11C19259

COMPLAINT FOR DECLARATORY  
RELIEF (ORS CHAPTER 28)

NOT SUBJECT TO MANDATORY  
ARBITRATION

14 Plaintiff Marion County Rural Fire Protection District #1 (hereinafter "District") alleges  
15 as its First Claim for Relief as follows:

16 1.

17 District is and was at all material times hereto an Oregon rural fire protection district duly  
18 organized and existing under ORS Chapter 478 as well as being a "District" as that term is used  
19 in ORS Chapter 198 and more specifically, ORS 198.705 to ORS 198.955, known as "The  
20 District Boundary Procedure Act" (hereinafter "Act"). District is both authorized to and is  
21 performing the services of a rural fire protection district throughout its geographic and  
22 jurisdictional boundaries.

23 2.

24 Defendant City of Keizer (hereinafter "Keizer") is an Oregon municipal corporation duly  
25 organized and existing under state law. Keizer has not and does not provide fire protection or  
26 ambulance services.

1 3.

2 Defendant Keizer Fire District (hereinafter "KFD") is an Oregon rural fire protection  
3 district organized and subject to the terms of ORS Chapter 478 as well as a "District" as that  
4 term is used in ORS Chapter 198 and more specifically in the Act.

5 4.

6 District's jurisdictional and geographic boundaries overlap the geographic and  
7 jurisdictional boundaries of Keizer into an area known as Clear Lake. The remainder of the  
8 District lies outside the jurisdiction and geographic boundaries of Keizer in unincorporated  
9 portions of Marion County and within the City of Salem.

10 5.

11 KFD's geographic and jurisdictional boundaries lie solely within Keizer, except for small  
12 areas extending into unincorporated Marion County.

13 6.

14 No portion of District is within the geographic and/or jurisdictional boundaries of KFD.

15 7.

16 ORS 198.705(4) defines, for purposes of the Act and this matter, the term "Change of  
17 organization" to mean "...the annexation or withdrawal of territory to or from a [rural fire  
18 protection] district ..."

19 8.

20 ORS 198.705(20) defines, for purposes of the Act and this matter, the term "withdrawal"  
21 to mean "...the detachment, disconnection or exclusion of territory from an existing [rural fire  
22 protection] district."

23 9.

24 ORS 198.705(3) defines, for purposes of the Act and this matter, the term "annexation"  
25 to mean "...the attachment or addition of territory to, or inclusion of territory in, an existing  
26 [rural fire protection] district."

10.

ORS 198.715(2) provides that, except for districts and cities within the jurisdiction of a local government boundary commission or in cities directly providing fire protection services, "...all [rural fire protection] district...change of organization proceedings shall be initiated, conducted and completed as provided by [the Act]."

11.

ORS 198.720(2) provides that one rural fire protection district may not include territory within a second rural fire protection district where the second rural fire protection district is both authorized to and is performing fire protection services unless:

1. Withdrawal of the territory "...is proposed and the territory is withdrawn by withdrawal proceedings conducted in the other [rural fire protection] district simultaneously with the formation or annexation proceedings; and
2. The proposed boundary changes are approved for both districts; or
3. ORS Chapter 478 provides for automatic withdrawal of the affected territory.

12.

ORS Chapter 478 does not provide for automatic withdrawal.

13.

On or about July 11, 2011, the City Council, acting as the governing body for Keizer, adopted a resolution which fixed its August 1, 2011 City Council meeting (on or after 7:00 p.m.) as the date and time for a public hearing under ORS 222.524 for a public hearing on the question of withdrawal of Clear Lake from the District.

14.

The Keizer City Council at this August 1, 2011 meeting is considering adoption of an Ordinance entitled "Withdrawing territory from Marion County Fire District No. 1 and Declaring an Emergency" (hereinafter "Ordinance"), a copy of which is attached hereto as Exhibit 1."

15.

Accompanying the Ordinance was a staff report (hereinafter "Staff Report") from the City Attorney (through the City Manager) which describes the public hearing as "Keizer Rural Fire Protection District[s request] that the Council consider withdrawing the Clearlake Area from the jurisdiction of Marion County Fire District No. 1." A copy of the Staff Report is attached as Exhibit 2.

16.

The Keizer City Council, at this same meeting, is considering adoption of a Resolution "Proposing Annexation to Keizer Fire" (hereinafter "Resolution"), a copy of which is attached hereto as Exhibit 3. The Resolution proposes to annex the Clear Lake area to KFD.

17.

District contends the sole and exclusive method for withdrawal of Clear Lake from its jurisdiction is only if said withdrawal is done in full prior compliance with the Act which compliance has not occurred, to wit:

1. The Clear Lake territory has not been withdrawn by withdrawal proceedings conducted in the District simultaneously with annexation proceedings done by KFD; and
2. The proposed changes have not been approved by both boards for the District and KFD.

18.

District contends Keizer lacks the lawful ability and/or jurisdiction to consider or attempt to effect withdrawal of Clear Lake from the District and thereafter transfer Clear Lake to KFD using the process set out in ORS 222.524 and ORS 222.530 because the City has not, is not and will not directly provide fire protection and ambulance services in Clear Lake and thus any such action on that withdrawal would be in derogation of the exclusive statutory protocols therefor set out in the Act, *ultra vires* and *void ad initio*.

19.

Keizer and KFD contend Keizer has authority to withdraw Clear Lake from the District without fully complying with the terms of the Act and that neither Keizer nor KFD need comply with the Act.

20.

A justiciable controversy exists between the parties inasmuch as:

1. Keizer and KFD contend that they need not comply with the Act in order to effectuate withdrawal of territory from the District and District contends that withdrawal of territory from its jurisdiction can occur only if done consistent with the Act; and
2. Keizer and KFD contend they do not have to comply with the mandate.

FOR A SECOND AND SEPARATE CLAIM FOR RELIEF, Plaintiff alleges:

21.

Realleges paragraphs 1 through and including 8, 14 and 15 above.

22.

Notwithstanding District's contention set out in its First Claim for Relief that Keizer and KFD lack the authority to withdraw property from the District using a process other than that set out in the Act, Keizer's Ordinance manifesting Keizer's decision to withdraw territory from the District is without effect and void *ab initio* inasmuch as it is denominated by Keizer as an emergency ordinance which is not in compliance with the mandate of ORS 222.524(4), to wit: the proposed Ordinance declaring withdrawal of Clear Lake from the District must be subject to a referendum which an emergency ordinance, being effective immediately, is not.

23.

Keizer and KFD contend the Ordinance need not comply with the terms of ORS 222.524(4).

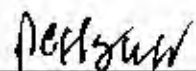


1 NOW THEREFORE, BASED ON THE FOREGOING, Plaintiff prays for judgment as  
2 follows:

- 3 1. Finding and declaring Defendants Keizer and KFD to be without authority to effectuate  
4 the withdrawal of territory from District using the process set out in ORS 222.524;  
5 2. Finding and declaring any withdrawal of territory from District to KFD must be done in  
6 full compliance with the terms of the District Boundary Procedures Act and not  
7 otherwise;  
8 3. Permanently enjoining Defendants Keizer and KFD from taking any action relative to the  
9 withdrawal of territory from District without first complying with the terms of the  
10 District Boundary Procedure Act;  
11 4. In the alternative, Finding and declaring that Ordinance *void ab initio* and without effect  
12 inasmuch as it is not in compliance with ORS 222.524(4);  
13 5. Awarding Plaintiff its costs and disbursements incurred herein; and  
14 6. Such other relief as may be just, equitable and appropriate under the circumstances.

15  
16 DATED this 1<sup>st</sup> day of August, 2011.

17 BEERY ELSNER & HAMMOND LLP

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